

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOHN ROBINSON

Claimant

VS.

PARKWAY HEALTH CARE CENTER

Respondent

AND

NATIONAL UNION FIRE INSURANCE CO.,

Insurance Carrier

Docket No. 183,036

AWARD

On the 5th day of September, 1995, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on May 17, 1995, came regularly on for oral argument by telephone conference.

APPEARANCES

Claimant appeared by and through his attorney, Randy S. Stalcup of Wichita, Kansas. The respondent and its insurance carrier appeared by and through their attorney, William Townsley III of Wichita, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

Stipulations

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) What, if any, is the nature and extent of claimant's injury and/or disability?
- (2) Claimant's average weekly wage.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds the wage statement marked claimant's exhibit #1 and attached to the deposition transcript of the regular hearing reveals an average weekly wage of \$244.70. In finding this average weekly wage to be appropriate, the Appeals Board affirms the finding of the Administrative Law Judge regarding this issue.

The Appeals Board further finds that the findings of fact and conclusions of law set forth by the Administrative Law Judge in the Award of May 17, 1995, fully and clearly set forth the facts and conclusions in this matter and the Appeals Board will not reiterate same, instead adopting the findings and conclusions of the Administrative Law Judge as its own.

Claimant was examined and/or treated by three (3) different physicians in this matter. Dr. Robert Eyster, the treating physician, first saw claimant on October 7, 1993, and continued seeing and treating claimant through August 27, 1994. At the time of claimant's release, Dr. Eyster opined claimant had suffered a flair-up of a pre-existing disc condition resulting in no permanent functional impairment. Claimant was referred by his attorney to Dr. Daniel Zimmerman for an independent medical examination on January 24, 1994. Dr. Zimmerman, after examining claimant and reviewing the medical records, opined claimant had suffered a twelve percent (12%) impairment of function to the body as a whole as a result of his injuries suffered with respondent.

The Administrative Law Judge, in noting the discrepancy between the physicians, ordered an independent medical examination by Dr. Paul Lesko. Dr. Lesko, after examining claimant and reviewing medical records, diagnosed thoracic strain indicative of a facet problem rather than a disc problem. He opined claimant had a two to three percent (2-3%) functional impairment to the body as a whole. The Appeals Board finds that claimant has proven by a preponderance of the credible evidence a three percent (3%) functional impairment to the body as a whole and as such adopts and affirms the Award of the Administrative Law Judge in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the claimant, John Robinson, is granted an Award against the respondent, Parkway Health Care Center and its insurance carrier National Union Fire Insurance Company, for an accidental injury sustained on August 8, 1993.

Claimant is entitled to 13.72 weeks temporary total disability compensation at the rate of \$163.14 per week totaling \$2,238.28 followed thereafter by 12.04 weeks permanent partial general body disability at the rate of \$163.14 per week totaling \$1,964.21 for a 3% permanent partial general body disability making a total award of \$4,202.49. As of September 15, 1995, the entire Award is ordered due and paid in one lump sum less any amounts previously paid.

The contract of employment between claimant and his attorney is hereby approved insofar as it is not in contravention of K.S.A. 44-536.

Fees necessary to defray to expenses of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Barber & Associates
Transcript of Regular Hearing

\$255.60

Gene Dolginoff Associates, Ltd. Deposition of Daniel Zimmerman, M.D.	\$312.20
Kelley, York & Associates, Ltd. Deposition of Robert Eyster, M.D.	\$139.64
Deposition of Paul Lesko, M.D.	\$152.40
Total	\$292.04

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, Kansas
William Townsley III, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director